

**BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA**

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APPLICATION FOR BENEFICIAL WATER USE PERMIT NO. 76H-30155948) BY RCHP BILLINGS MISSOULA LLC) COMMUNITY MEDICAL CENTER)	PRELIMINARY DETERMINATION TO GRANT PERMIT
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On November 18, 2022, RCHP BILLINGS MISSOULA LLC (COMMUNITY MEDICAL CENTER-EMERGENCY) (Applicant) submitted Application for Beneficial Water Use Permit No. 76H 30155948 to the Missoula Water Resources Office of the Department of Natural Resources and Conservation (Department or DNRC) for 800 gallons per minute (GPM) and 967.8 acre-feet (AF) of volume for geothermal cooling. A pre-application meeting was held with the Applicant's representatives on June 15, 2022. The Department published receipt of the Application on its website November 21, 2022. The Application was determined to be correct and complete as of April 19, 2023. An Environmental Assessment for this Application was completed on May 31, 2023.

INFORMATION

The Department considered the following information submitted by the Applicant, which is contained in the administrative record.

Application as filed:

- Application for Beneficial Water Use Permit, Form 600-GW
- Attachments: Criteria Supplement to Form 600
 - Supplemental Information to the Application
 - Form 633 and Variance Request
 - Department- issued Variance Approval, dated November 9, 2022
 - Well Logs (GWIC ID# 315405 & 315406)
 - Pump specification and pump curve data

- Possessory Interest Documentation
- Maps:
 - Schematic showing location of extraction well
 - Schematic showing location of injection well
 - 2019 NAIP aerial photo showing point of diversion and injection well
 - 2019 NAIP aerial photo labeled site map, showing the place of use
 - 2019 topographic map – site map
- Aquifer Testing Addendum
- Basin Closure Addendum & Hydrogeologic Assessment

Information Received after Application Filed

- Revised 2019 NAIP aerial photo showing the place of use

Information within the Department’s Possession/Knowledge

- DNRC surface water and groundwater right records
- Department Technical Report dated April 18, 2023
- Department Memorandum entitled “Variance – Missoula Valley Geothermal/Heat Exchange Wells” dated March 10, 2010
- Department Hydrogeologist report entitled “Groundwater Permit Report” dated February 22, 2023, prepared by Melissa Brickl, Groundwater Hydrologist

The Department has fully reviewed and considered the evidence and argument submitted in this Application and preliminarily determines the following pursuant to the Montana Water Use Act (Title 85, chapter 2, part 3, MCA).

PROPOSED APPROPRIATION

FINDINGS OF FACT

1. The Applicant proposes to divert water at a maximum rate of 800 GPM up to a diverted volume of 967.8 AF from January 1 to December 31 annually for geothermal cooling in the emergency department at Community Medical Center. The proposed diversion (extraction well)

GWIC# 315405 is 120-foot-deep groundwater well fitted with a 50 hp Franklin Electric submersible pump located in the N2NWNE of Section 31, T13N, R19W, Missoula County. The injection well GWIC #315406 is 130 feet-deep, located 300 feet west from the extraction well, and located in the NWNWNE of Section 31, T13N, R19W, Missoula County. The extraction and injection wells and the place of use are located at Community Medical Center in Missoula. Building renovation and upgrades to the Medical Center include installing a geothermal cooling system in the emergency department.

2. The wells are approximately 4,500 ft northeast of the Bitterroot River and 7,800 feet south of the Clark Fork River. The point of diversion and place of use are located in the Bitterroot River sub basin (76H) which is a legislatively closed basin.

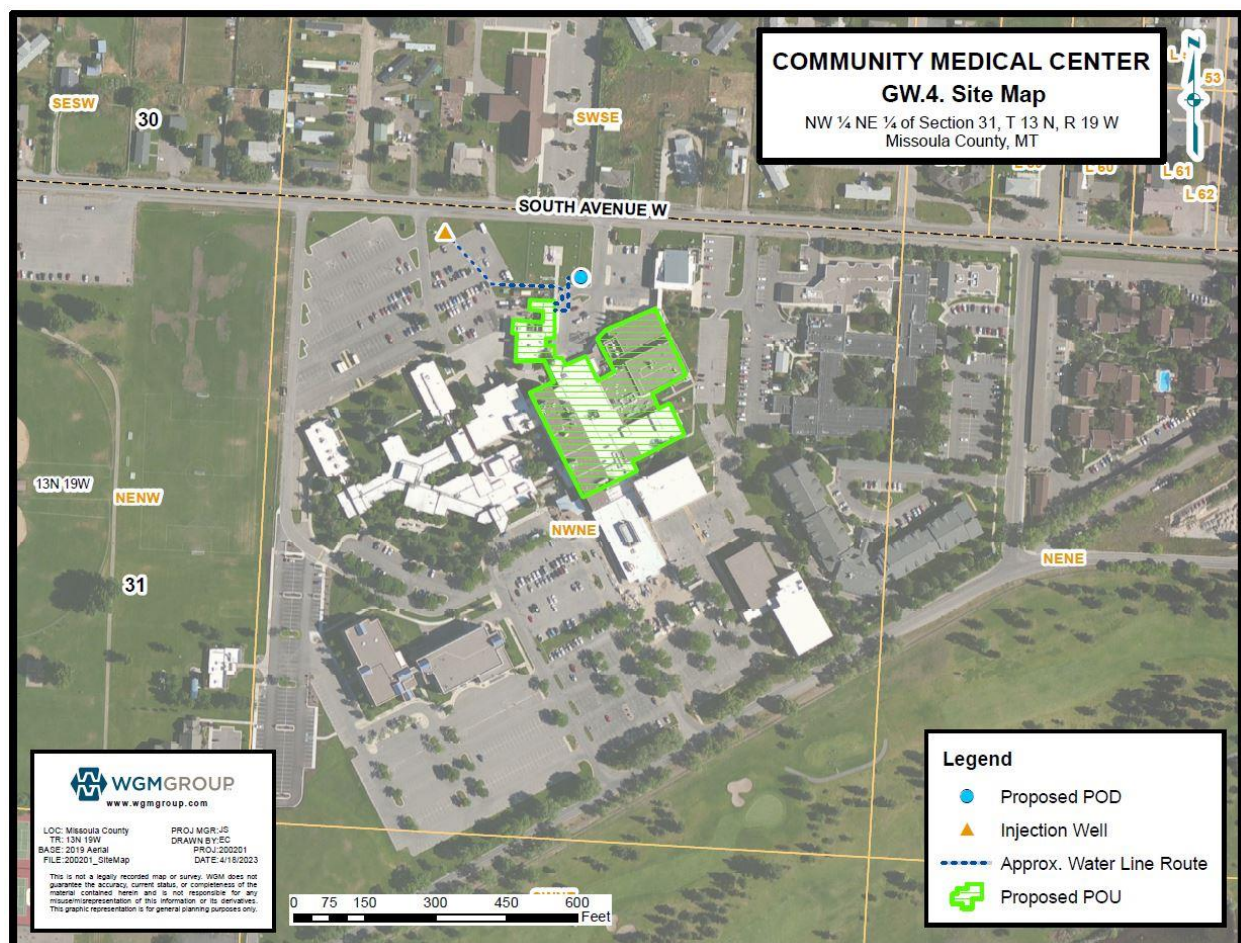
3. There is no consumptive use associated with the proposed appropriation. This application is for a non-consumptive water right for geothermal cooling. The injection of water back into the aquifer after cooling use results in depletions and accretions that offset each other, resulting in no net effect to the groundwater aquifer or surface water flows in the Clark Fork and Bitterroot rivers.

4. The Applicant provided a plan and agreed to measure water using an in-line flow meter which will collect and store flow rate and volume data for water measurement reporting requirements. Applicant will be required to measure the monthly flow rates and volumes of water diverted for geothermal cooling as a condition of permit issuance and will report these figures to DNRC on a yearly basis. Water measurements collected and submitted by the Applicant will allow the Applicant to determine when they have fully perfected the proposed geothermal cooling use and ensure that the Applicant does not exceed the permitted flow rate and volume of water. The following condition applies:

THE APPROPRIATOR SHALL INSTALL A DEPARTMENT APPROVED IN-LINE FLOW METER AT A POINT IN THE DELIVERY LINE APPROVED BY THE DEPARTMENT. WATER MUST NOT BE DIVERTED UNTIL THE REQUIRED MEASURING DEVICE IS IN PLACE AND OPERATING. ON A FORM PROVIDED BY THE DEPARTMENT, THE APPROPRIATOR SHALL KEEP A WRITTEN MONTHLY RECORD OF THE FLOW RATE AND VOLUME OF ALL WATER DIVERTED, INCLUDING THE PERIOD OF TIME. RECORDS SHALL BE SUBMITTED BY

JANUARY 31 OF EACH YEAR AND UPON REQUEST AT OTHER TIMES DURING THE YEAR UNTIL THE BENEFICIAL WATER USE PERMIT IS PERFECTED AND THE DEPARTMENT RECEIVES A PROJECT COMPLETION NOTICE. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF A PERMIT OR CHANGE. THE RECORDS MUST BE SENT TO THE WATER RESOURCES REGIONAL OFFICE. THE APPROPRIATOR SHALL MAINTAIN THE MEASURING DEVICE SO IT ALWAYS OPERATES PROPERLY AND MEASURES FLOW RATE AND VOLUME ACCURATELY.

Map 1



BASIN CLOSURE

FINDINGS OF FACT

5. This application is for geothermal cooling use from a groundwater well. This Application is located within the Bitterroot River sub basin temporary closure, Basin 76H.
6. Applicant submitted a hydrogeologic assessment determined to be correct and complete.
7. Applicant did not submit an accompanying Application for Change in Water Right because the Applicant did not find that net depletion would occur to any surface water sources that would result in adverse effect.

CONCLUSIONS OF LAW

8. This Application is for an appropriation of groundwater, which is allowed under 85-2-344 (2)(a). The Application falls under the exceptions for the basin closure, 85-2-344 (2)(a), MCA.
9. In reviewing an application for groundwater in a closed basin, the District Court in Sitz Ranch v. DNRC observed:

The basin from which applicants wish to pump water is closed to further appropriations by the legislature. The tasks before an applicant to become eligible for an exception are daunting. The legislature set out the criteria discussed above (§85-2-311, MCA) and placed the burden of proof squarely on the applicant. The Supreme Court has instructed that those burdens are exacting. It is inescapable that an applicant to appropriate water in a closed basin must withstand strict scrutiny of each of the legislatively required factors.

Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 7.

A basin closure exception does not relieve the Department of analyzing § 85-2-311, MCA criteria. Qualification under a basin closure exception allows the Department to accept an application for processing. The Applicant must still prove the requisite criteria. E.g., *In the Matter of Application for Beneficial Water Use Permit No. 41K-30043385 by Marc E. Lee* (DNRC Final Order 2011); *In the Matter of Application for Beneficial Water Use Permit No. 41K-30045713 by Nicholas D. Konen*, (DNRC Final Order 2011).

§ 85-2-311, MCA, BENEFICIAL WATER USE PERMIT CRITERIA

GENERAL CONCLUSIONS OF LAW

10. The Montana Constitution expressly recognizes in relevant part that:

- (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.
- (2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use . . . shall be held to be a public use.
- (3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

Mont. Const. Art. IX, §3. While the Montana Constitution recognizes the need to protect senior appropriators, it also recognizes a policy to promote the development and use of the waters of the state by the public. This policy is further expressly recognized in the water policy adopted by the Legislature codified at § 85-2-102, MCA, which states in relevant part:

- (1) Pursuant to Article IX of the Montana constitution, the legislature declares that any use of water is a public use and that the waters within the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided in this chapter. . . .
- (3) It is the policy of this state and a purpose of this chapter to encourage the wise use of the state's water resources by making them available for appropriation consistent with this chapter and to provide for the wise utilization, development, and conservation of the waters of the state for the maximum benefit of its people with the least possible degradation of the natural aquatic ecosystems. In pursuit of this policy, the state encourages the development of facilities that store and conserve waters for beneficial use, for the maximization of the use of those waters in Montana . . .

11. Pursuant to § 85-2-302(1), MCA, except as provided in §§ 85-2-306 and 85-2-369, MCA, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works except by applying for and receiving a permit from the Department. See § 85-2-102(1), MCA. An applicant in a beneficial water use permit proceeding must affirmatively prove all of the applicable criteria in § 85-2-311, MCA. Section § 85-2-311(1) states in relevant part:

... the department shall issue a permit if the applicant proves by a preponderance of evidence that the following criteria are met:

(a) (i) there is water physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate; and

(ii) water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:

(A) identification of physical water availability;

(B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and

(C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.

(b) the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. In this subsection (1)(b), adverse effect must be determined based on a consideration of an applicant's plan for the exercise of the permit that demonstrates that the applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the applicant has a possessory interest or the written consent of the person with the possessory interest in the property where the water is to be put to beneficial use, or if the proposed use has a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit;

(f) the water quality of a prior appropriator will not be adversely affected;

(g) the proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); and

(h) the ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(2) The applicant is required to prove that the criteria in subsections (1)(f) through (1)(h) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (1)(f), (1)(g), or (1)(h), as applicable, may not be met. For the criteria set forth in subsection (1)(g), only the department of environmental quality or a local water quality district established under Title 7, chapter 13, part 45, may file a valid objection.

To meet the preponderance of evidence standard, “the applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other information developed by the applicant, the department, the U.S. geological survey, or the U.S. natural resources conservation service and other specific field studies.” § 85-2-311(5), MCA (emphasis added). The determination of whether an application has satisfied the § 85-2-311, MCA criteria is committed to the discretion of the Department. Bostwick Properties, Inc. v. Montana Dept. of Natural Resources and Conservation, 2009 MT 181, ¶ 21. The Department is required grant a permit only if the § 85-2-311, MCA, criteria are proven by the applicant by a preponderance of the evidence. Id. A preponderance of evidence is “more probably than not.” Hohenlohe v. DNRC, 2010 MT 203, ¶¶33, 35.

12. Pursuant to § 85-2-312, MCA, the Department may condition permits as it deems necessary to meet the statutory criteria:

(1) (a) The department may issue a permit for less than the amount of water requested, but may not issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. The department may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria listed in 85-2-311 and subject to subsection (1)(b), and it may issue temporary or seasonal permits. A permit must be issued subject to existing rights and any final determination of those rights made under this chapter.

E.g., Montana Power Co. v. Carey (1984), 211 Mont. 91, 96, 685 P.2d 336, 339 (requirement to grant applications as applied for, would result in, “uncontrolled development of a valuable natural resource” which “contradicts the spirit and purpose underlying the Water Use Act.”); see also, In the Matter of Application for Beneficial Water Use Permit No. 65779-76M by Barbara L. Sowers (DNRC Final Order 1988)(conditions in stipulations may be included if it further compliance with statutory criteria); In the Matter of Application for Beneficial Water Use Permit No. 42M-80600 and Application for Change of Appropriation Water Right No. 42M-036242 by Donald H. Wyrick (DNRC Final Order 1994); Admin. R. Mont. (ARM) 36.12.207.

13. The Montana Supreme Court further recognized in Matter of Beneficial Water Use Permit Numbers 66459-76L, Ciotti: 64988-G76L, Starnes (1996), 278 Mont. 50, 60-61, 923 P.2d 1073, 1079, 1080, *superseded by legislation on another issue*:

Nothing in that section [85-2-313], however, relieves an applicant of his burden to meet the statutory requirements of § 85-2-311, MCA, before DNRC may issue that provisional permit. Instead of resolving doubts in favor of appropriation, the Montana Water Use Act requires an applicant to make explicit statutory showings that there are unappropriated waters in the source of supply, that the water rights of a prior appropriator will not be adversely affected, and that the proposed use will not unreasonably interfere with a planned use for which water has been reserved.

See also, Wesmont Developers v. DNRC, CDV-2009-823, First Judicial District Court,

Memorandum and Order (2011). The Supreme Court likewise explained that:

.... unambiguous language of the legislature promotes the understanding that the Water Use Act was designed to protect senior water rights holders from encroachment by junior appropriators adversely affecting those senior rights.

Montana Power Co., 211 Mont. at 97-98, 685 P.2d at 340; see also Mont. Const. art. IX §3(1).

14. An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of § 85-2-311, MCA is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this § 85-2-311, MCA. § 85-2-311(6), MCA.

15. The Department may take notice of judicially cognizable facts and generally recognized technical or scientific facts within the Department's specialized knowledge, as specifically identified in this document. ARM 36.12.221(4).

Physical Availability
FINDINGS OF FACT

16. To address the aquifer testing requirements of Administrative Rules of Montana (ARM) 36.12.121, the Applicant requested a variance to ARM 36.12.121(3)(e)(h) on July 19, 2022, and was granted the variance November 9, 2022. The variance granted allowed the Applicant to vary from the 72-hour aquifer testing requirement and from drawdown measurements from an observation well. The Department granted the variance following guidance outlined in the DNRC March 10, 2010, memo entitled “Variance – Missoula Valley Geothermal/Heat Exchange Wells”. This memo allows the Applicant to perform a limited duration test to address short-term physical availability and adequacy of diversion while forgoing the more rigorous aquifer testing typically required if the aquifer properties provided in the memo are used in evaluation of the criteria (Transmissivity (T) = 50,000 ft²/day, Specific Yield (S_y)= 0.10). The Applicant conducted an 8-hour drawdown yield test and submitted results of the aquifer tests on DNRC’s Aquifer Test Data Form (Form 633).

17. Short term physical availability was evaluated by the Department using Applicant supplied data from 8-hour test completed for the extraction well at an average constant pumping rate of 601 GPM. The Department- modeled maximum drawdown was 2.2 feet after the first year, leaving 84.8 feet of water above the bottom of the well. The 8-hour drawdown test adequately demonstrates physical availability of available water column for the well.

18. Physical groundwater availability was calculated by Department Hydrogeologist Melissa Brickl who presented the findings in a February 22, 2023, Aquifer Test Report. Using aquifer properties established in the DNRC March 10, 2010, memo, a constant pumping rate of 601 GPM (equivalent to the proposed geothermal volume diverted over the requested period of use) for the extraction well and injection well (negative rates for the injection well) the Department modeled the zone of influence to the 0.01-foot drawdown contour. The calculation for groundwater flux through the zone of influence resulted in a volume of 7,541 AF/year. The Applicant requested 967.8 AF/yr of non-consumed volume.

19. The Department finds that the amount of groundwater the Applicant seeks to appropriate is physically available.

CONCLUSIONS OF LAW

20. Pursuant to § 85-2-311(1)(a)(i), MCA, an applicant must prove by a preponderance of the evidence that “there is water physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate.”

21. It is the applicant’s burden to produce the required evidence. *In the Matter of Application for Beneficial Water Use Permit No. 27665-41I by Anson* (DNRC Final Order 1987)(applicant produced no flow measurements or any other information to show the availability of water; permit denied); *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, (DNRC Final Order 2005).

22. An applicant must prove that at least in some years there is water physically available at the point of diversion in the amount the applicant seeks to appropriate. *In the Matter of Application for Beneficial Water Use Permit No. 72662s76G by John Fee and Don Carlson* (DNRC Final Order 1990); *In the Matter of Application for Beneficial Water Use Permit No. 85184s76F by Wills Cattle Co. and Ed McLean* (DNRC Final Order 1994).

23. The Applicant has proven that water is physically available at the proposed point of diversion in the amount Applicant seeks to appropriate. § 85-2-311(1)(a)(i), MCA. (FOF Nos. 16 - 19)

Legal Availability:

FINDINGS OF FACT

24. Within the zone of influence, (as defined in Finding of Fact 18), there are a total of 83 groundwater rights on record with the Department listing a total annual appropriation of 10,311.0 AF. Subtracting the legal demands of 10,311.0 AF from the calculated groundwater flux 7,541.0 AF leaves -2,770.0 acre-feet of groundwater. See Table 1 below.

Table 1: List of legal demands within the zone of influence

Water Right No.		OWNERS	Water Right Type	Volume Diverted AF
76H	905-00	SHELTER WEST INC	GROUNDWATER	*1.0
76M	2020-00	HIGH SCHOOL DIST #1 MISSOULA COUNTY	GROUNDWATER	50.0
76H	3083-00	AMERICAN DENTAL MANUFACTURING CO	GROUNDWATER	*0.6
76H	11085-00	MISSOULA COUNTY	GROUNDWATER	295.5
76M	13464-00	MCKEE PROPERTIES LLC	GROUNDWATER	*1.5
76H	13475-00	SOUTHGATE MALL ASSOCIATES LLP	GROUNDWATER	*1.0
76H	14489-00	MISSOULA, CITY OF	GROUNDWATER	4,032.0
76H	16494-00	GRANT L MACLAY	GROUNDWATER	3.5
76H	16892-00	GLEN WOHL	GROUNDWATER	3.5
76H	17945-00	BRUCE M FOWLER	GROUNDWATER	2.0
76M	19813-00	IPB PROPERTY LLC	GROUNDWATER	1.5
76M	19901-00	PERFECTOS SERVICES LLC	GROUNDWATER	1.5
76M	24800-00	USA (DEPT OF HOUSING & URBAN DEVELOPMENT)	GROUNDWATER	1.5
76H	26789-00	KINGS ROAD PROPERTY MANAGEMENT	GROUNDWATER	39.0
76M	34751-00	JAY B KETTERING; GWEN MCKENNA	GROUNDWATER	1.5
76M	35380-00	JAMES E MEYER	GROUNDWATER	13.5
76M	36744-00	MOUNT STEPHENS CORP	GROUNDWATER	1.0
76M	38473-00	ONE MISSOULA CHURCH	GROUNDWATER	4.5
76M	40043-00	BEYER HOLDINGS LLC	GROUNDWATER	3.0
76H	40048-00	CLARENCE H ENGLAND; VIRGINIA L ENGLAND	GROUNDWATER	2.5
76M	40147-00	MISSOULA, CITY OF	GROUNDWATER	1,937.8
76M	40148-00	MISSOULA, CITY OF	GROUNDWATER	1,937.8
76H	40164-00	MISSOULA, CITY OF	GROUNDWATER	1,613.0
76M	43173-00	ANN M WASHINGTON; GEORGE A WASHINGTON	GROUNDWATER	3.0
76H	48126-00	MISSOULA RURAL FIRE DISTRICT	GROUNDWATER	3.0
76M	48380-00	DAVID N BOWN; MARILYN W BOWN; CAROLYN B DOEBLER; H & A PROPERTIES LLC; CORRINNE A KIRSCHER; RALPH B KIRSCHER; LARRY C LARSON; LLOYD A TWITE FAMILY PARTNERSHIP; VIRGINIA L PICKENS; RH WILLIAMS CO INC; LISLE E WOOD; PAULINE P WOOD	GROUNDWATER	19.0
76M	48961-00	UNION SQUARE APARTMENTS LLC	GROUNDWATER	8.0
76M	49078-00	NORTH CENTRAL FOOD SYSTEMS INC	GROUNDWATER	80.6
76H	49118-00	FIRST BANK SOUTHSIDE MISSOULA	GROUNDWATER	5.0
76H	49268-00	2501 BROOKS LLC	GROUNDWATER	22.6
76H	57734-00	EARL M PRUYN	GROUNDWATER	1.5
76M	62677-00	MISSOULA COUNTY FAIRGROUNDS	GROUNDWATER	8.6
76H	64671-00	GLACIER BANK	GROUNDWATER	10.1
76H	67581-00	DOERING LLC	GROUNDWATER	1.7
76H	67731-00	B & E CORP; RUSTY J RICHARDSON; SANDRA J RICHARDSON	GROUNDWATER	26.5
76M	68478-00	POPE JOHN XXIII PARISH	GROUNDWATER	1.9
76M	68486-00	GARY W REYNOLDS; SIDNEY L REYNOLDS	GROUNDWATER	1.5

76M	98070-00	MATTHEW J MEYERS; MEGAN J MEYERS	GROUNDWATER	1.8
76M	98085-00	WATKINS ENTERPRISES LLP	GROUNDWATER	2.2
76H	99212-00	BONNIE L KONSCHAK; FRAN LAWRENCE; MARY C LAWRENCE	GROUNDWATER	1.5
76H	99372-00	GLACIER BANK	GROUNDWATER	13.0
76M	100901-00	MLHC LLC	GROUNDWATER	2.5
76M	103455-00	PES REAL ESTATE LLC	GROUNDWATER	16.5
76H	107645-00	WORSTER GROUP, LLC	GROUNDWATER	4.3
76H	110520-00	SHARON L CHAPPEL	GROUNDWATER	1.6
76M	110773-00	MOUNTAIN HOME MONTANA INC	GROUNDWATER	3.5
76M	110913-00	DEARBORN & RESERVE LLP; FORT ROAD LLC	GROUNDWATER	3.8
76H	149722-00	JOYCE J GROVER; RICHARD H GROVER	GROUNDWATER	1.5
76M	151078-00	NORTH CENTRAL FOOD SYSTEMS INC	GROUNDWATER	8.0
76H	151079-00	KOZANI INVESTMENTS LLC; N3 LLC	GROUNDWATER	10.0
76M	151124-00	NORTH CENTRAL FOOD SYSTEMS INC	GROUNDWATER	10.0
76H	151135-00	MACKENZIE FORMAN; TANNER WALLACE	GROUNDWATER	2.0
76M	215679-00	MISSOULA COUNTY PUBLIC SCHOOL	GROUNDWATER	*16.5
76M	30003607	BECKY L ASBY; VIRGINIA L ENGLAND	GROUNDWATER	1.6
76M	30009782	KERT B RODGERS; PORTHIP RODGERS	GROUNDWATER	*1.6
76M	30013817	MISSOULA FAMILY YWCA	GROUNDWATER	*5.0
76M	30019551	DEBORAH JO IRVIN	GROUNDWATER	*1.0
76H	30047076	RUSTY J RICHARDSON; SANDRA J RICHARDSON	GROUNDWATER	1.0
76M	30048637	BRIAN A PORTER	GROUNDWATER	1.0
76M	30051564	CHILDRENS ONCOLOGY CAMP FOUNDATION	GROUNDWATER	1.0
76H	30051779	MISSOULA COUNTY	GROUNDWATER	0.0
76M	30062780	MISSOULA RURAL FIRE DISTRICT	GROUNDWATER	2.7
76M	30068060	MISSOULA COUNTY FAIRGROUNDS	GROUNDWATER	5.1
76M	30068062	MISSOULA COUNTY FAIRGROUNDS	GROUNDWATER	4.8
76M	30069377	DEAN SHEPARD	GROUNDWATER	1.6
76H	30105341	LMG CRG INVESTMENTS LLC	GROUNDWATER	1.0
76M	30109263	COURTNEY L MERCER; ZACHARY W MERCER	GROUNDWATER	9.0
76M	30112019	ERIC'S FARMS INC	GROUNDWATER	0.4
76M	30113854	JUDITH A BROWN-WEIR; JAMES A WEIR	GROUNDWATER	1.6
76H	30113986	DUANE D YAGER; SONYA A YAGER	GROUNDWATER	0.8
76M	30114903	JOANN STEWART	GROUNDWATER	1.4
76H	30114912	LAURENCE D DE MOTT	GROUNDWATER	1.0
76M	30118048	J & K LIMITED	GROUNDWATER	3.1
76M	30118961	DONALD L CHURCH; MARILYN E CHURCH	GROUNDWATER	2.3
76M	30119461	MISSOULA, CITY OF	GROUNDWATER	5.4
76M	30119508	MISSOULA COUNTY FAIRGROUNDS	GROUNDWATER	0.0
76M	30125240	WILLIAM B HANSON	GROUNDWATER	3.5
76M	30127189	SHERWOOD SCOTT PROPERTIES LLC	GROUNDWATER	2.0
76H	30137843	GARY W REYNOLDS; SIDNEY L REYNOLDS	GROUNDWATER	1.6
76M	30149478	MISSOULA COUNTY HIGH SCHOOLS	GROUNDWATER	7.5

76M	30150711	RAINI N PHELPS; BRADY M POTTS	GROUNDWATER	1.0
76M	30151017	CONNIE A BRADFORD; ERIC W BRADFORD	GROUNDWATER	2.8
76M	30152625	YAN ZHANG	GROUNDWATER	1.0
			TOTAL AF	10,311.0

*Water Rights listed zero for volume- the DNRC standards were used to estimate the volume

25. The Department's analysis shows that groundwater is not legally available within the zone of influence from pumping the proposed extraction well. The proposed appropriation of groundwater for geothermal cooling can be considered legally available because it is non-consumptive; water diverted from the source aquifer is returned to the source aquifer without delay, and therefore the consumed volume associated with this proposed appropriation is 0 AF per year. Thus, the Department finds the proposed appropriation to the source to be legally available as no additional consumptive demand on the source is being created.

26. As the depletions from pumping and accretions from injection are equal and there is no net consumptive use, there will be no effect to surface water flows in the Clark Fork River or the Bitterroot River, approximately 7,800 feet and 4,500 feet from the location of the well respectively. Due to the lack of surface water depletions in the Clark Fork River and Bitterroot River, a legal availability analysis for surface water is not required.

CONCLUSIONS OF LAW

27. Pursuant to § 85-2-311(1)(a), MCA, an applicant must prove by a preponderance of the evidence that:

(ii) water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Legal availability is determined using an analysis involving the following factors:

(A) identification of physical water availability;

(B) identification of existing legal demands on the source of supply throughout the area of potential impact by the proposed use; and

(C) analysis of the evidence on physical water availability and the existing legal demands, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands on the supply of water.

E.g., ARM 36.12.101 and 36.12.120; Montana Power Co., 211 Mont. 91, 685 P.2d 336 (Permit granted to include only early irrigation season because no water legally available in late irrigation season); *In the Matter of Application for Beneficial Water Use Permit No. 81705-g76F by Hanson* (DNRC Final Order 1992).

28. It is the applicant's burden to present evidence to prove water can be reasonably considered legally available. Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 7 (the legislature set out the criteria (§ 85-2-311, MCA) and placed the burden of proof squarely on the applicant. The Supreme Court has instructed that those burdens are exacting.); see also Matter of Application for Change of Appropriation Water Rights Nos. 101960-41S and 101967-41S by Royston (1991), 249 Mont. 425, 816 P.2d 1054 (burden of proof on applicant in a change proceeding to prove required criteria); *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, (DNRC Final Order 2005) (it is the applicant's burden to produce the required evidence.); *In the Matter of Application for Beneficial Water Use Permit No. 41H 30023457 by Utility Solutions, LLC* (DNRC Final Order 2007)(permit denied for failure to prove legal availability); see also ARM 36.12.1705.

29. Pursuant to Montana Trout Unlimited v. DNRC, 2006 MT 72, 331 Mont. 483, 133 P.3d 224, the Department recognizes the connectivity between surface water and ground water and the effect of pre-stream capture on surface water. E.g., Wesmont Developers v. DNRC, CDV-2009-823, Montana First Judicial District Court, *Memorandum and Order*, (2011) Pgs. 7-8; *In the Matter of Beneficial Water Use Permit Nos. 41H 30012025 and 41H 30013629 by Utility Solutions LLC* (DNRC Final Order 2006)(mitigation of depletion required), *affirmed*, Faust v. DNRC et al., Cause No. CDV-2006-886, Montana First Judicial District (2008); see also Robert and Marlene Takle v. DNRC et al., Cause No. DV-92-323, Montana Fourth Judicial District for Ravalli County, *Opinion and Order* (June 23, 1994) (affirming DNRC denial of Applications for Beneficial Water Use Permit Nos. 76691-76H, 72842-76H, 76692-76H and 76070-76H; underground tributary flow cannot be taken to the detriment of other appropriators including surface appropriators and ground water appropriators must prove unappropriated surface water,

citing Smith v. Duff, 39 Mont. 382, 102 P. 984 (1909), and Perkins v. Kramer, 148 Mont. 355, 423 P.2d 587 (1966)); *In the Matter of Beneficial Water Use Permit No. 80175-s76H by Tintzman* (DNRC Final Order 1993)(prior appropriators on a stream gain right to natural flows of all tributaries in so far as may be necessary to afford the amount of water to which they are entitled, citing Loyning v. Rankin (1946), 118 Mont. 235, 165 P.2d 1006; Granite Ditch Co. v. Anderson (1983), 204 Mont. 10, 662 P.2d 1312; Beaverhead Canal Co. v. Dillon Electric Light & Power Co. (1906), 34 Mont. 135, 85 P. 880); *In the Matter of Beneficial Water Use Permit No. 63997-42M by Joseph F. Crisafulli* (DNRC Final Order 1990)(since there is a relationship between surface flows and the ground water source proposed for appropriation, and since diversion by applicant's well appears to influence surface flows, the ranking of the proposed appropriation in priority must be as against all rights to surface water as well as against all groundwater rights in the drainage.) Because the applicant bears the burden of proof as to legal availability, the applicant must prove that the proposed appropriation will not result in prestream capture or induced infiltration and cannot limit its analysis to ground water. § 85-2-311(a)(ii), MCA. Absent such proof, the applicant must analyze the legal availability of surface water in light of the proposed ground water appropriation. *In the Matter of Application for Beneficial Water Use Permit No. 41H 30023457 By Utility Solutions LLC* (DNRC Final Order 2007) (permit denied); *In the Matter of Application for Beneficial Water Use Permit No. 76H-30028713 by Patricia Skergan and Jim Helmer* (DNRC Final Order 2009); Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 5 ; Wesmont Developers v. DNRC, CDV-2009-823, First Judicial District Court, *Memorandum and Order*, (2011) Pgs. 11-12.

30. Where a proposed ground water appropriation depletes surface water, applicant must prove legal availability of amount of depletion of surface water throughout the period of diversion either through a mitigation /aquifer recharge plan to offset depletions or by analysis of the legal demands on, and availability of, water in the surface water source. Robert and Marlene Takle v. DNRC et al., Cause No. DV-92-323, Montana Fourth Judicial District for Ravalli County, *Opinion and Order* (June 23, 1994); *In the Matter of Beneficial Water Use Permit Nos. 41H*

30012025 and 41H 30013629 by *Utility Solutions LLC* (DNRC Final Order 2006)(permits granted), *affirmed*, Faust v. DNRC et al., Cause No. CDV-2006-886, Montana First Judicial District (2008); *In the Matter of Application for Beneficial Water Use Permit 41H 30019215 by Utility Solutions LLC* (DNRC Final Order 2007)(permit granted), *affirmed*, Montana River Action Network et al. v. DNRC et al., Cause No. CDV-2007-602, Montana First Judicial District (2008); *In the Matter of Application for Beneficial Water Use Permit No. 41H 30023457 by Utility Solutions LLC* (DNRC Final Order 2007) (permit denied for failure to analyze legal availability outside of irrigation season (where mitigation applied)); *In the Matter of Application for Beneficial Water Use Permit No. 41H 30026244 by Utility Solutions LLC* (DNRC Final Order 2008); *In the Matter of Application for Beneficial Water Use Permit No. 76H-30028713 by Patricia Skergan and Jim Helmer* (DNRC Final Order 2009)(permit denied in part for failure to analyze legal availability for surface water depletion); Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 5 (Court affirmed denial of permit in part for failure to prove legal availability of stream depletion to slough and Beaverhead River); Wesmont Developers v. DNRC, CDV-2009-823, First Judicial District Court, *Memorandum and Order*, (2011) Pgs. 11-12 (“DNRC properly determined that Wesmont cannot be authorized to divert, either directly or indirectly, 205.09 acre-feet from the Bitterroot River without establishing that the water does not belong to a senior appropriator”; applicant failed to analyze legal availability of surface water where projected surface water depletion from groundwater pumping); *In the Matter of Application for Beneficial Water Use Permit No. 76D-30045578 by GBCI Other Real Estate, LLC* (DNRC Final Order 2011) (in an open basin, applicant for a new water right can show legal availability by using a mitigation/aquifer recharge plan or by showing that any depletion to surface water by groundwater pumping will not take water already appropriated; development next to Lake Koocanusa will not take previously appropriated water). Applicant may use water right claims of potentially affected appropriators as a substitute for “historic beneficial use” in analyzing legal availability of surface water under § 85-2-360(5), MCA. Royston, *supra*.

31. Applicant has proven by a preponderance of the evidence that water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested, based on the records of the Department and other evidence provided to the Department. § 85-2-311(1)(a)(ii), MCA. (FOF Nos. 24-26.)

Adverse Effect

FINDINGS OF FACT

32. The Applicant will operate the groundwater cooling exchange system during times of water shortage the same as in times of normal supply as the proposed appropriation results in no depletion to either surface or groundwater sources. However, if a legitimate call for water is made by a senior appropriation the Applicant can turn off the pump in the extraction well ceasing diversion for geothermal cooling. The use of groundwater for geothermal cooling will not worsen aquifer conditions in times of shortage because groundwater is returned to the source aquifer at the same rate it is diverted with the injection of water offsetting the effects of pumping from the extraction well.

33. Using the Theis (1935) solution with the aquifer properties established in the DNRC March 10, 2010 memo, the Department modeling shows that after five years of pumping at a constant rate of 601.0 GPM from the extraction well and -601.0 GPM for the injection well for the 365-day period of use, the 1-foot drawdown contour would occur within 15 feet from the production well. There are zero water rights that are predicted to experience drawdown greater than 1 foot.

34. Surface water rights will not be adversely affected as the extraction and injection wells are in close proximity (300 feet), groundwater is returned to the same aquifer from which it is extracted, the use is non-consumptive, and there is sufficient distance to the surface water sources to allow for extraction and injection effects to result in net-zero depletions (7,800 feet and 4,500 feet).

35. The plumbing system for the geothermal cooling unit will utilize two flow and totalizer meters, one meter will be fitted on the groundwater supply line entering the building from the

extraction well, and the second meter will be fitted on the return water line that routes diverted groundwater back to the injection well. The Applicant will report monthly water usage to DNRC annually, ensuring that the permitted flow rate and volume will not be exceeded and to allow for the Applicant to use water measurement data to perfect the provisional permit. Upon filing of a Project Completion Notice, Form 617, the water measurement condition will be removed from the permit provided the Applicant met the condition and submitted annual water measurement reports while perfecting the right.

36. There will be no adverse effect because the application is for non-consumptive geothermal use, the rate of extraction and injection is equal. As such, net depletions and accretions would cancel out resulting in no net effect to groundwater or surface waters.

CONCLUSIONS OF LAW

37. Pursuant to § 85-2-311(1)(b), MCA, the Applicant bears the affirmative burden of proving by a preponderance of the evidence that the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. Analysis of adverse effect must be determined based on a consideration of an applicant's plan for the exercise of the permit that demonstrates that the applicant's use of the water will be controlled so the water right of a prior appropriator will be satisfied. See Montana Power Co. (1984), 211 Mont. 91, 685 P.2d 336 (purpose of the Water Use Act is to protect senior appropriators from encroachment by junior users); Bostwick Properties, Inc. ¶ 21.

38. An applicant must analyze the full area of potential impact under the § 85-2-311, MCA criteria. *In the Matter of Beneficial Water Use Permit No. 76N-30010429 by Thompson River Lumber Company* (DNRC Final Order 2006). While § 85-2-361, MCA, limits the boundaries expressly required for compliance with the hydrogeologic assessment requirement, an applicant is required to analyze the full area of potential impact for adverse effect in addition to the requirement of a hydrogeologic assessment. Id. ARM 36.12.120(5).

39. Applicant must prove that no prior appropriator will be adversely affected, not just the objectors. Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 4.

40. In analyzing adverse effect to other appropriators, an applicant may use the water rights claims of potentially affected appropriators as evidence of their “historic beneficial use.” See Matter of Application for Change of Appropriation Water Rights Nos. 101960-41S and 101967-41S by Royston (1991), 249 Mont. 425, 816 P.2d 1054.

41. It is the applicant’s burden to produce the required evidence. E.g., Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 7 (legislature has placed the burden of proof squarely on the applicant); *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, (DNRC Final Order 2005). (DNRC Final Order 2005). The Department is required to grant a permit only if the § 85-2-311, MCA, criteria are proven by the applicant by a preponderance of the evidence. Bostwick Properties, Inc. ¶ 21.

42. Section 85-2-311 (1)(b) of the Water Use Act does not contemplate a de minimis level of adverse effect on prior appropriators. Wesmont Developers v. DNRC, CDV-2009-823, First Judicial District Court, *Memorandum and Order*, (2011) Pg. 8.

43. The Applicant has proven by a preponderance of the evidence that the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. § 85-2-311(1)(b), MCA. (FOF Nos. 32-36)

Adequate Diversion

FINDINGS OF FACT

44. Groundwater will be pumped from the production well which has a 12-inch casing and is 120 feet deep. The well is equipped with a 50hp Franklin Electric submersible pump capable of pumping 800 GPM. The Applicant submitted pump specifications and a pump curve. The injection well is 130 feet deep with a 12-inch casing.

45. Groundwater will be pumped from the extraction well (GWIC 315405), which is screened from 100 feet to 120 feet below ground surface into an underground pipeline to the mechanical room. Groundwater will circulate into a plate and frame heat exchanger in the mechanical room. The geothermal cooling system will provide temperature control for the emergency department. Groundwater will not flow through an air handling coil or mix with other fluids. After the water is routed through the emergency department building, it will exit the system through an underground pipeline to a drop pipe installed in the injection well (GWIC 315406). A schematic of the approximate location of water lines entering and exiting the mechanical room was submitted by the applicant. All diverted water will be returned to the aquifer via the injection well, the project will not discharge water.
46. Two flow and totalizer meters will be installed in the mechanical room – see finding of fact 35.

CONCLUSIONS OF LAW

47. Pursuant to § 85-2-311(1)(c), MCA, an Applicant must demonstrate that the proposed means of diversion, construction, and operation of the appropriation works are adequate.
48. The adequate means of diversion statutory test merely codifies and encapsulates the case law notion of appropriation to the effect that the means of diversion must be reasonably effective, i.e., must not result in a waste of the resource. *In the Matter of Application for Beneficial Water Use Permit No. 33983s41Q by Hoyt* (DNRC Final Order 1981); § 85-2-312(1)(a), MCA.
49. Water wells must be constructed according to the laws, rules, and standards of the Board of Water Well Contractors to prevent contamination of the aquifer. *In the Matter of Application for Beneficial Water Use Permit No. 41I-105511 by Flying J Inc.* (DNRC Final Order 1999).
50. Information needed to prove that proposed means of diversion, construction, and operation of the appropriation works are adequate varies, based upon project complexity design by licensed engineer adequate. *In the Matter of Application for Beneficial Water Use Permit No. 41C-11339900 by Three Creeks Ranch of Wyoming LLC* (DNRC Final Order 2002).

51. Applicant has proven by a preponderance of the evidence that the proposed means of diversion, construction, and operation of the appropriation works are adequate for the proposed beneficial use. § 85-2-311(1)(c), MCA (FOF Nos. 44-46).

Beneficial Use

FINDINGS OF FACT

52. The Applicant proposes to use groundwater from January 1 through December 31 annually for the purpose of geothermal cooling in the emergency department at Community Medical Center.

53. The Applicant proposes to divert groundwater from an extraction well at a maximum flow rate of 800 GPM. The total annual diverted volume will not exceed 967.8 AF per year. The geothermal cooling system was designed by mechanical engineers for a maximum flow rate of 800 GPM. The proposed system is estimated to operate at 800 GPM for 18 hours per day for 365 days a year. WGM Group, Inc. calculated the volume of 967.8 AF a year. $(800 \text{ gal/min} \times 1080 \text{ min/day} \times 365 \text{ days}) \div 1 \text{ AF}/325,851 \text{ gal} = 967.8 \text{ AF}$.

54. The Department finds the requested flow rate of 800 GPM and volume of 967.8 AF for geothermal cooling to be a beneficial use of water.

CONCLUSIONS OF LAW

55. Under § 85-2-311(1)(d), MCA, an Applicant must prove by a preponderance of the evidence the proposed use is a beneficial use.

56. An appropriator may appropriate water only for a beneficial use. See also, § 85-2-301 MCA. It is a fundamental premise of Montana water law that beneficial use is the basis, measure, and limit of the use. E.g., McDonald, supra; Toohey v. Campbell (1900), 24 Mont. 13, 60 P. 396. The amount of water under a water right is limited to the amount of water necessary to sustain the beneficial use. E.g., Bitterroot River Protective Association v. Siebel, Order on Petition for Judicial Review, Cause No. BDV-2002-519, Montana First Judicial District Court, Lewis and Clark County (2003), *affirmed on other grounds*, 2005 MT 60, 326 Mont. 241, 108

P.3d 518; *In The Matter Of Application For Beneficial Water Use Permit No. 43C 30007297 by Dee Deaterly* (DNRC Final Order), *affirmed other grounds*, Dee Deaterly v. DNRC et al, Cause No. 2007-186, Montana First Judicial District, *Order Nunc Pro Tunc on Petition for Judicial Review* (2009); Worden v. Alexander (1939), 108 Mont. 208, 90 P.2d 160; Allen v. Petrick (1924), 69 Mont. 373, 222 P. 451; *In the Matter of Application for Beneficial Water Use Permit No. 41S-105823 by French* (DNRC Final Order 2000).

57. Amount of water to be diverted must be shown precisely. Sitz Ranch v. DNRC, DV-10-13390, Fifth Judicial District Court, *Order Affirming DNRC Decision*, (2011) Pg. 3 (citing BRPA v. Siebel, 2005 MT 60, and rejecting applicant's argument that it be allowed to appropriate 800 acre-feet when a typical year would require 200-300 acre-feet).

58. Applicant proposes to use water for geothermal cooling which is a recognized beneficial use. § 85-2-102(5), MCA. Applicant has proven by a preponderance of the evidence geothermal cooling is a beneficial use and that 967.8 AF of diverted volume and 800 GPM of water requested is the amount needed to sustain the beneficial use. § 85-2-311(1)(d), MCA. (FOF Nos. 52-54)

Possessory Interest

FINDINGS OF FACT

59. The applicant signed the application form affirming the applicant has possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

CONCLUSIONS OF LAW

60. Pursuant to § 85-2-311(1)(e), MCA, an Applicant must prove by a preponderance of the evidence that it has a possessory interest or the written consent of the person with the possessory interest in the property where the water is to be put to beneficial use, or if the proposed use has a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national

forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

61. Pursuant to ARM 36.12.1802:

(1) An applicant or a representative shall sign the application affidavit to affirm the following:

(a) the statements on the application and all information submitted with the application are true and correct and

(b) except in cases of an instream flow application, or where the application is for sale, rental, distribution, or is a municipal use, or in any other context in which water is being supplied to another and it is clear that the ultimate user will not accept the supply without consenting to the use of water on the user's place of use, the applicant has possessory interest in the property where the water is to be put to beneficial use or has the written consent of the person having the possessory interest.

(2) If a representative of the applicant signs the application form affidavit, the representative shall state the relationship of the representative to the applicant on the form, such as president of the corporation, and provide documentation that establishes the authority of the representative to sign the application, such as a copy of a power of attorney.

(3) The department may require a copy of the written consent of the person having the possessory interest.

62. The Applicant has proven by a preponderance of the evidence that it has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use. § 85-2-311(1)(e), MCA. (FOF Nos. 59)

PRELIMINARY DETERMINATION

Subject to the terms, analysis, and conditions in this Order, the Department preliminarily determines that this Application for Beneficial Water Use Permit No. 76H 30155948 should be GRANTED.

The Department determines the applicant may divert groundwater for geothermal cooling by means of a 120-foot-deep extraction well (GWIC 315405). The well will divert up to 800 GPM and up to a maximum diverted volume of 967.8 AF which will be returned to the aquifer via a 130-foot-deep injection well (GWIC 315406). The extraction well is located in the N2NWNE of Section 31, T13N, R19W, Missoula County and the injection well is located 300 feet west from the extraction well in the NWNWNE of Section 31, T13N, R19W, Missoula County. The period of diversion and use will be from January 1 through December 31 annually.

The application will be subject to the following conditions, limitations or restrictions.

1) **WATER MEASUREMENT RECORDS REQUIRED:**

The Appropriator shall install a department approved in-line flow meter at a point in the delivery line approved by the Department. Water must not be diverted until the required measuring device is in place and operating. On a form provided by the Department, the Appropriator shall keep a written monthly record of the flow rate and volume of all water diverted, including the period of time. Records shall be submitted by January 31 of each year and upon request at other times during the year until the beneficial water use permit is perfected and the Department receives a project completion notice. Failure to submit reports may be cause for revocation of a permit or change. The records must be sent to the Water Resources Regional Office. The Appropriator shall maintain the measuring device, so it always operates properly and measures flow rate and volume accurately.

NOTICE

This Department will provide public notice of this Application and the Department's Preliminary Determination to Grant pursuant to §§ 85-2-307, MCA. The Department will set a deadline for objections to this Application pursuant to §§ 85-2-307, and -308, MCA. If this Application receives no valid objection or all valid objections are unconditionally withdrawn, the Department will grant this Application as herein approved. If this Application receives a valid objection, the application and objection will proceed to a contested case proceeding pursuant to Title 2 Chapter 4 Part 6, MCA, and § 85-2-309, MCA. If valid objections to an application are received and withdrawn with stipulated conditions and the department preliminarily determined to grant the permit or change in appropriation right, the department will grant the permit or change subject to conditions necessary to satisfy applicable criteria.

DATED this 1st day of June 2023.

/Original signed by Jim Nave/

Jim Nave, Regional Manager

Missoula Regional Office

Department of Natural Resources and Conservation

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the PRELIMINARY DETERMINATION TO GRANT was served upon all parties listed below on this 1st day of June 2023, by first class United States mail.

COMMUNITY MEDICAL CENTER
C/O JAMES GILLHOUSE
2827 FORT MISSOULA RD
MISSOULA, MT 59804

WGM GROUP
1111 E. BROADWAY
MISSOULA, MT 59802
ATTN: EMILY CLARK

/Original signed by Kathy Schubert/
KATHY SCHUBERT

DATE